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**IN THE  
COURT OF APPEALS OF INDIANA**

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PAUL E. BRYANT,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 88A04-0005-CR-194

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APPEAL FROM THE WASHINGTON SUPERIOR COURT  
The Honorable Frank Newkirk, Jr., Judge  
Cause No. 88D01-9707-CF-201

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**May 21, 2001**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Defendant Paul Bryant (“Bryant”) appeals three convictions of Resisting Law Enforcement, two counts as a Class D felony and one count as a Class A misdemeanor.<sup>1</sup> We affirm in part and reverse in part.<sup>2</sup>

## **Issues**

Bryant presents three issues for review:

1. Whether the trial court erroneously instructed the jury;
2. Whether there is sufficient evidence to support the convictions for Resisting Law Enforcement; and
3. Whether he was properly convicted of multiple counts of Resisting Law Enforcement.

## **Facts and Procedural History**

The facts most favorable to the verdict are as follows. During the early morning hours of July 15, 1997, Officer Christopher Strange of the Salem Police Department (“Officer Strange”) observed a motorcycle exit a mobile home park at a high rate of speed. The operator of the motorcycle, later identified as Bryant, disregarded a stop sign at the town square. Officer Strange activated his emergency lights. Bryant turned around and looked in Officer Strange’s direction and sped away. Officer Strange then activated his siren and pursued Bryant, but was unable to overtake him. Officer Strange “paced” Bryant at a speed of approximately 85 miles per hour.

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<sup>1</sup> IND. CODE § 35-44-3-3.

<sup>2</sup> As part of the Court of Appeals Centennial Celebration, we held oral argument on this case in the Jefferson Circuit Court, Madison, Indiana on April 23, 2001.

Sergeant Blaine Goode of the Washington County Sheriff's Department ("Sergeant Goode"), upon learning of Officer Strange's pursuit of Bryant, proceeded to the intersection of Canton Road and Canton Road South and activated his lights and sirens. He positioned his vehicle to block the path of Bryant's motorcycle. However, as Bryant approached the intersection, he disregarded the stop sign and drove around Sergeant Goode's vehicle. With his emergency lights and siren activated, Sergeant Goode drove in pursuit of Bryant. Bryant drove through at least two yards and proceeded into the town of Canton, where Officer Strange and Sergeant Goode jointly blocked him.

Sergeant Goode's vehicle slid on gravel and bumped the rear of Bryant's motorcycle. Bryant and his passenger Max Frost ("Frost") jumped from the motorcycle without injury. Sergeant Goode ordered Bryant to the ground; Bryant refused. Sergeant Goode ordered Bryant to turn around to be handcuffed; again, Bryant refused. Sergeant Goode then grabbed Bryant's wrist and Bryant tried to pull away. Bryant repeatedly tried to push Sergeant Goode away, in a manner Sergeant Goode described as "violent" and "very belligerent." Sergeant Goode wrestled Bryant to the ground. Salem Police Officer Scott Stewart ("Officer Stewart") arrived to find the pair "thrashing around" on the ground. Officer Stewart then grabbed Bryant's arm to subdue him.

Bryant was charged with Operating a Vehicle While Intoxicated and three counts of Resisting Law Enforcement.<sup>3</sup> A jury trial was held on July 21, 22 and 23, 1999. Bryant was acquitted of Operating a Vehicle While Intoxicated and convicted of all other

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<sup>3</sup> Count II alleged that Bryant fled from Officer Bryant. Count III alleged that Bryant fled from Sergeant Goode. Count IV alleged that Bryant resisted both officers.

counts. He was sentenced to concurrent three-year terms on Counts II and III, and a consecutive one-year term on Count IV. The trial court ordered nine months of the sentence executed, and Bryant was to be placed on probation for three years and three months. Initially, Bryant was placed on home detention to await a work release placement. He now appeals.

## **Discussion and Decision**

### **I. Jury Instruction**

Bryant claims that the following instructions, given in addition to a general witness credibility instruction, unduly emphasized his testimony:

#### **FINAL INSTRUCTION 10**

The defendant is a competent witness to testify in [his] own behalf. In this case, the defendant has testified as a witness. It is your duty to consider and weigh [his] testimony in the same manner as that of any other witness.

#### **FINAL INSTRUCTION 11**

Neither sympathy nor prejudice for or against the defendant in this case should be allowed to influence you in whatever verdict you may find.

(R. 188-89.)

We review the giving of jury instructions only for an abuse of discretion; that is, the instructions taken as a whole must misstate the law or otherwise mislead the jury. Simmons v. State, 717 N.E.2d 635, 640 (Ind. Ct. App. 1999). The Indiana Supreme Court has consistently held that the trial court may give or refuse to give an instruction such as Instruction 10; neither is error. McCovern v. State, 539 N.E.2d 26, 31 (Ind. 1989); Jackson v. State, 521 N.E.2d 339, 342 (Ind. 1988). Moreover, Instruction 11 is not, as Bryant claims, an instruction that intimates an opinion on the credibility of a

witness. It merely instructs the jury to act without sympathy or prejudice for or against Bryant. He has failed to demonstrate that the instructions as a whole misstated the law or misled the jury.

## II. Sufficiency of the Evidence

Bryant next contends that his convictions are not supported by sufficient evidence. Specifically, he claims an absence of evidence (1) that he forcibly resisted arrest, as alleged in Count IV, (2) that he knowingly or intentionally fled from police as alleged in Count III (flight from Officer Strange), or (3) that his flight created a substantial risk of bodily injury to another person, as alleged in Counts II (flight from Sergeant Goode) and III.

To convict Bryant of Resisting Law Enforcement, a Class D felony, as alleged in Count II, the State was required to establish that he knowingly or intentionally fled from Officer Strange after Officer Strange had identified himself as a law enforcement officer by audible or visual means and ordered him to stop, and that in so doing, he operated a vehicle in a manner that created a substantial risk of bodily injury to officers, Frost or other motorists. IND. CODE § 35-44-3-3(b)(1)(B).

To convict Bryant of Resisting Law Enforcement, a Class D felony, as alleged in Count III, the State was required to establish that he knowingly or intentionally fled from Sergeant Goode after Sergeant Goode had identified himself as a law enforcement officer by audible or visual means and ordered him to stop, and that in so doing, he operated a vehicle in a manner that created a substantial risk of bodily injury to officers, Frost, or other motorists. IND. CODE § 35-44-3-3(b)(1)(B).

To convict Bryant of Resisting Law Enforcement, a Class A misdemeanor, as alleged in Count IV, the State was required to establish that he forcibly resisted Sergeant Goode or Officer Strange. IND. CODE § 35-44-3-3(a)(1).

When reviewing a claim of insufficiency of the evidence, we consider only the evidence most favorable to the verdict and the reasonable inferences that can be drawn therefrom. Davis v. State, 658 N.E.2d 896, 897 (Ind. 1995), cert. denied, 116 S.Ct. 1275 (1996). We do not reweigh evidence or assess witness credibility. Id. The conviction will be affirmed unless we conclude that no reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

In claiming an absence of sufficient evidence to support his conviction on Count IV, Bryant relies upon Shoultz v. State, 735 N.E.2d 818, 822 (Ind. Ct. App. 2000), trans. denied, for the proposition that the forcible nature of a defendant's resistance, obstruction or interference is an essential element of the offense of Resisting Law Enforcement that the State must prove for conviction pursuant to Indiana Code section 35-44-3-3(a)(1). Bryant argues that his conduct at the time of his arrest was merely evasive rather than forcible. We acknowledge that a person "forcibly resists" law enforcement only when he or she "uses strong, powerful, violent means to evade a law enforcement official's rightful exercise of his or her duties." Id. However, we disagree that Bryant's resistance was less than forcible.

Sergeant Goode testified that when he grabbed Bryant's right wrist to place a handcuff on it, Bryant pulled away "violently" and pushed against Sergeant Goode with his hands. (R. 551.) Sergeant Goode testified further: "Mr. Bryant and I began wrestling

as I was trying to get him handcuffed and we both ended up on the ground momentarily and then we were both standing again just as quickly. Um, I, the incident began at the front end of my vehicle and ended at the rear of my vehicle when Officer Strange came to assist me. It took both of us to get him handcuffed.” (R. 552.) There is sufficient evidence from which the factfinder could conclude that Bryant forcibly resisted Sergeant Goode in the rightful exercise of his duties.

With regard to the resistance by flight counts, Officer Strange testified as follows. He activated his lights as he followed Bryant around the Salem town square. The lights reflected in the windows of nearby buildings. As Bryant accelerated and turned onto another roadway, Officer Strange activated his siren. Bryant turned around and looked at Officer Strange, but accelerated rather than stop. With Frost on the back of his motorcycle, Bryant accelerated to 85 miles per hour. Sergeant Goode testified that he also activated his lights and siren, and attempted to block Bryant. Bryant maneuvered around Sergeant Goode’s vehicle, drove through residential yards, disregarded stop signs, and drove left of the centerline at least twice. There is sufficient evidence to establish that Bryant knowingly or intentionally fled from Sergeant Goode and Officer Strange after the officers had identified themselves by visual and audible means and ordered Bryant to stop. Moreover, there is sufficient evidence to establish that Bryant’s conduct created a substantial risk of bodily injury to the officers, his passenger or other motorists.

### III. Multiple Convictions

Finally, Bryant argues that his actions at most comprised a single episode and thus he could not properly be convicted of three counts of Resisting Law Enforcement. We agree.

Resisting law enforcement is not an offense against the person, but against lawful authority. Touchstone v. State, 618 N.E.2d 48, 49 (Ind. Ct. App. 1993). Therefore, only one entity is harmed as a result of a single incident, regardless of the number of law enforcement officers involved. Armstead v. State, 549 N.E.2d 400, 401 (Ind. Ct. App. 1990).

Here, the State charged that Bryant resisted law enforcement by separate means, that is, by flight and by forcible resistance. Nevertheless, the evidence discloses that one continuous episode of resistance occurred, in which Bryant initially fled from law enforcement on his vehicle and continued his resistance even after his vehicle was stopped. Bryant was continually pursued by law enforcement until he was stopped and arrested. As Officer Strange pursued Bryant without overtaking him, he placed a radio request for assistance. Sergeant Goode responded. Although Officer Strange eventually lost sight of Bryant, he did not then abandon his efforts to detain him. The persistent efforts of both officers eventually effected Bryant's arrest. No discrete and separate incident occurred. Accordingly, two convictions for Resisting Law Enforcement must be vacated.

Having previously concluded that there is sufficient evidence to support Bryant's conviction for Resisting Law Enforcement as a Class D felony, we affirm a single Class



D felony conviction. The second Class D felony conviction is vacated, as is the Class A misdemeanor conviction.

### **Conclusion**

Bryant has demonstrated no error in the trial court's instruction to the jury. Moreover, there is sufficient evidence to support his conviction of Resisting Law Enforcement as a Class D felony. However, because only a single incident of resisting law enforcement occurred, Bryant was not properly convicted of multiple offenses.

A single Class D felony conviction for Resisting Law Enforcement is affirmed.

Affirmed in part and reversed in part.

SHARPNACK, C.J., and NAJAM, J., concur.